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May 17, 2005

The Honorable Ed Whitfield, Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Washington, DC 20515-6115

Dear Honorable Ed Whitfield:

Directors:

Allison Arms
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Donald K. Barnard
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Ian Bland
Loureiro Engineering Associates, Inc.

Robert Bruner, CEAP, C-SI
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Michael Meredith, PhD, C-SAPA, C-SI
PharmaTox, Inc.

Stephen Mihalik, C-SAPA, C-SI
WorkSafe, Inc.

Richard Tobias, C-SI
ChoicePoint, Inc.

Jim Wright
DISA, Inc.

Cindy Zuber, C-SAPA, C-SI
Southwest Airlines Co.

I would like to thank the Chair and committee members for the opportunity to speak today on behalf of Substance Abuse Program Administrators Association (SAPAA).

The Substance Abuse Program Administrators Association (SAPAA) is a non-profit trade association whose members represent all of the alcohol and drug testing service agents including third party administrators (TPAs), in-house administrators, medical review officers (MROs), Substance Abuse Professionals (SAPs), manufacturers of testing devices, and collection sites/collectors. Our membership includes representation from all 50 states and Canada in all the above professions. Therefore, on behalf of SAPAA members (who represent well over 200,000 employers and more than 3.5 million DOT regulated drug tests) and the drug testing industry as a whole will take this opportunity to provide comments on adulterant



SUBSTANCE ABUSE PROGRAM ADMINISTRATORS ASSOCIATION

and substitution issues arising from products sold that claim to prevent detection of certain substances by drug testing programs, or allow for the substitution of a specimen.

In addition, I am co-owner of a'TEST consultants, inc. in North Little Rock, Arkansas. My company administers alcohol and drug-testing programs, provides medical review officer services, performs onsite specimen collections in the workplace, performs collections at three office locations, and collections at contracted facilities throughout the United States.

I am here to tell you today that the drug testing professionals of SAPAA are highly concerned about the games employees play on a daily basis in the collection centers around America to beat a drug test. They are resourceful, creative and have little fear that their misconduct will truly have a consequence. SAPAA believes that the integrity of regulated drug testing is at stake if Congress does not take strong action to beat these drug cheaters at their game. Attached to my remarks is a letter from the former acting director of the U.S. Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ONDCP), in which he expresses similar concerns of that office.

What is the human cost of an adulterated or substituted drug specimen?

It is the bus driver with a load of school kids who crashes into a bridge because he is high on cocaine, when only three days earlier he tested negative by substituting a specimen for his own.

It is a drug-testing collector who is assaulted after informing a donor that his sample could not be accepted because it was outside the normal temperature range. When told that another specimen would need to be provided; the donor became irate causing a package containing a yellow liquid to fall from his pants leg. The donor grabbed the collector and threw her into the wall, injuring her elbow but capable of reaching an installed panic button. As the donor fled from the office, he took his cold specimen and also the plastic bag that had fallen out of his pants leg. On May 4, 2005, this donor was found guilty of a Class A 3rd Degree Battery Charge, given one year of probation, fined \$500 plus court costs, found guilty of Arkansas' anti-

adulterant law which is a Class B Misdemeanor Charge, and was fined an additional \$350 plus court costs.

It is a nuclear plant operator in the southeast discovering that a contractor employee adulterated his sample with a commercially available product during a pre access fitness for duty test. His first initially screening test was positive for Marijuana (THC), but oddly after it was sent to a HHS certified laboratory; it was confirmed by gas chromatography mass spectrometry as negative. With an obvious discrepancy, the operator requested an additional adulterant test be performed. This additional test showed the presence of pyridinium chlorochromate, a known adulterant used for masking THC in the urine. The employee was interviewed, he admitted to being a regular marijuana user and using this adulterant product to beat previously required test.

There are more stories from collectors, Medical Review Officers, TPAs and employers around the country where donors attempt, and on occasion succeed, to beat a drug test.

It is the on-hands experience of SAPAA members around the country who deal with this plague every day that has caused our Association to take such a strong stand against these cheaters. State by state patchwork legislation is not a solution. Only when Congress decides to take some strong action to truly punish federally regulated employees and applicants who choose to attempt to cheat will drug testing adulteration and substitution come to a screeching halt. Such action by Congress will effectively cause a drop in demand for the kind of cheater's aids that litter the Internet, head shops, and certain nutrition stores. SAPAA recommends that Congress take a serious look at amending the Department of Transportation laws and include a lifetime CDL disqualification and significant increased penalties if a donor presents an adulterated or substituted specimen in a DOT regulated test. SAPAA also believes it would be appropriate for a database to be maintained by the DOT of employees and applicants who have been determined by the DOT to have presented an adulterated or substituted specimen for regulated testing. SAPAA believes a slight modification to the federal custody and control forms should be made to warn the donor of the consequences of such misconduct.

SAPAA stands willing to assist this Committee in any manner its finds appropriate. We have included in our written submission suggested legislation from SAPAA's General Counsel to accomplish what we have recommended with regard to Commercial Drivers. You will note the suggested highlighted additions to **49 U.S.C. 521** and **49 U.S.C. 31310**. Similar amendments could be made to include employees covered by the other DOT Agencies. SAPAA stands ready to assist this committee with that effort and willing to marshal the support of our membership to call their Congressmen and Senators and request speedy approval of such legislation. We believe such a measure will have broad support.

As I stated at the beginning of my remarks, the members of SAPAA believe that the integrity of federally regulated testing is at stake, and with that the safety of our nation's rail lines, skies, roadways, pipelines and navigable waterways. We request serious consideration of our proposal.

In conclusion, on behalf of all of those professionals in the alcohol and drug testing industry and employers everywhere, SAPAA thanks this Committee for spotlighting this serious problem and its commitment to beat the cheats.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Sims", is positioned above the typed name.

Jeff Sims, C-SAPA, C-SI

SAPAA Secretary and Legislative Affairs Chairman

Summary of Jeff Simms' Remarks to Congress

- On behalf of SAPAA members (who represent well over 200,000 employers and more than 3.5 million DOT regulated drug tests) and the drug testing industry as a whole will take this opportunity to provide comments on adulterant and substitution issues arising from products sold that claim to prevent detection of certain substances by drug testing programs, or allow for the substitution of a specimen.
- The drug testing professionals of SAPAA are highly concerned about the games employees play on a daily basis in the collection centers around America to beat a drug test. They are resourceful, creative and have little fear that their misconduct will truly have a consequence. SAPAA believes that the integrity of regulated drug testing is at stake if Congress does not take strong action to beat these drug cheaters at their game.
- **The human cost of an adulterated or substituted drug specimen is frightening.**
- It is the on-hands experience of SAPAA members around the country who deal with this plague every day that has caused our Association to take such a strong stand against these cheaters. State by state patchwork legislation is not a solution. Only when Congress decides to take some strong action to truly punish federally regulated employees and applicants who choose to attempt to cheat will drug testing adulteration and substitution come to a screeching halt. Such action by Congress will effectively cause a drop in demand for the kind of cheater's aids that litter the Internet, head shops, and certain nutrition stores. SAPAA recommends that Congress take a serious look at amending the Department of Transportation laws and include a lifetime CDL disqualification and significant increased penalties if a donor presents an adulterated or substituted specimen in a DOT regulated test. SAPAA also believes it would be appropriate for a database to be maintained by the DOT of employees and applicants who have been determined by the DOT to have presented an adulterated or substituted specimen for regulated testing. SAPAA believes a slight modification to the federal custody and control forms should be made to warn the donor of the consequences of such misconduct.
- We have included in our written submission suggested legislation from SAPAA's General Counsel to accomplish what we have recommended with regard to Commercial Drivers. You will note the suggested highlighted additions to **49 U.S.C. 521** and **49 U.S.C. 31310**.
- The members of SAPAA believe that the integrity of federally regulated testing is at stake, and with that the safety of our nation's rail lines, skies, roadways, pipelines and navigable waterways.
- SAPAA thanks this Committee for spotlighting this serious problem and its commitment to beat the cheats.